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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 UNITED STATES OF AMERICA)
and CALIFORNIA DEPARTMENT)
19 OF TOXIC SUBSTANCES)
CONTROL,)

20 Plaintiffs,)

21 v.)

22 LEACH INTERNATIONAL)
23 CORPORATION,)

24 Defendant.)
25
26
27
28

Civil No.

CONSENT DECREE

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1 I. BACKGROUND

2 A. The United States of America (“United States”), on behalf of the
3 Administrator of the United States Environmental Protection Agency (“EPA”), and
4 the California Department of Toxic Substances Control (“DTSC”) filed a joint
5 complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive
6 Environmental Response, Compensation, and Liability Act (“CERCLA”), 42
7 U.S.C. §§ 9606, 9607, and Section 7003 of the Resource Conservation and
8 Recovery Act (“RCRA”), 42 U.S.C. § 6973, against Leach International
9 Corporation (“Settling Defendant”).

10 B. The United States and DTSC in their complaint seek, inter alia:
11 (1) reimbursement of costs incurred by EPA, the United States Department of
12 Justice, and DTSC for response actions at the Baldwin Park Operable Unit (Area 2)
13 of the San Gabriel Valley Superfund Sites, Areas 1-4, in Los Angeles County,
14 California (the “BPOU Area”), together with accrued interest; and (2) performance
15 of studies and response work by Settling Defendant at the BPOU Area consistent
16 with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

17 C. Settling Defendant and Leach Holding Corporation (“Leach Holding”)
18 that have entered into this Consent Decree do not admit, and specifically deny:
19 (i) any liability to the Plaintiffs arising out of the transactions or occurrences
20 alleged in the complaint; and (ii) that the release or threatened release of hazardous
21 substance(s) at or from the BPOU Area constitutes an imminent or substantial
22 endangerment to the public health or welfare or the environment.

23 D. The work required to implement the Record of Decision (“ROD”) for the
24 BPOU Area, as supplemented by the Explanation of Significant Differences
25 (“ESD”), is being performed by other parties pursuant to EPA’s June 30, 2000
26 Unilateral Administrative Order No. 2000-13 (as amended) issued under Section
27 106 of CERCLA, 42 U.S.C. § 9606, and Section 7003 of RCRA, 42 U.S.C. § 6973
28 (“EPA’s Order”), relating to the BPOU Area.

1 E. The United States, DTSC, and Settling Defendant agree, and the Court
2 by entering this Consent Decree finds, that this Consent Decree has been
3 negotiated by the Parties in good faith, that settlement of this matter will avoid
4 prolonged and complicated litigation between the Parties, and that this Consent
5 Decree is fair, reasonable, and in the public interest.

6 NOW, THEREFORE, with the consent of the Parties to this Decree, it
7 is hereby ORDERED, ADJUDGED, AND DECREED:

8 II. JURISDICTION

9 1. This Court has jurisdiction over the subject matter of this action
10 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 6973(a), 9606, 9607,
11 and 9613(b). This Court also has personal jurisdiction over the Settling Defendant.
12 Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C.
13 § 1391(b) and (c). Settling Defendant consents to and shall not challenge the terms
14 of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent
15 Decree.

16 III. PARTIES BOUND

17 2. This Consent Decree applies to and is binding upon the following
18 parties: the United States; DTSC; and Settling Defendant and its respective
19 successors and assigns. Any change in ownership or corporate status of Settling
20 Defendant including, but not limited to, any transfer of assets or real or personal
21 property, shall in no way alter Settling Defendant's responsibilities under this
22 Consent Decree.

23 IV. DEFINITIONS

24 3. Unless otherwise expressly provided herein, terms used in this
25 Consent Decree that are defined in CERCLA, RCRA, or in regulations
26 promulgated under CERCLA or RCRA shall have the meaning assigned to them in
27 CERCLA or RCRA or in such regulations. Whenever terms listed below are used
28 in this Consent Decree or in the appendices attached hereto and incorporated

hereunder, the following definitions shall apply:

“BPOU Area” shall mean the Baldwin Park Operable Unit (Area 2) of the San Gabriel Valley Superfund Sites, Areas 1-4, in and near the cities of Azusa, Irwindale, and Baldwin Park, in Los Angeles County, California, and depicted generally on the map attached as Appendix A.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

“Certification of Completion” shall mean EPA’s written determination that the Remedial Action has been performed and that the performance standards have been achieved.

“Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.

“DTSC” shall mean the California Department of Toxic Substances Control and any predecessor or successor departments or agencies of DTSC.

“DTSC Response Costs” shall mean: (i) all costs, including, but not limited to, direct and indirect costs that DTSC has incurred at or in connection with the BPOU Area prior to the entry of this Consent Decree, and (ii) all future costs (including, but not limited to, direct and indirect costs) related to the implementation or oversight of the Work, that DTSC will incur at or in connection with the BPOU Area.

1 “EPA” shall mean the United States Environmental Protection Agency and
2 any successor departments, agencies, or instrumentalities of the United States.

3 “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance
4 Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

5 “Explanation of Significant Differences” or “ESD” shall mean the Explanation of
6 Significant Differences relating to the BPOU Area issued by EPA in May 1999.
7 The ESD is attached as Appendix C.

8 “Interest” shall mean interest at the rate specified for interest on investments
9 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
10 compounded annually on October 1 of each year, in accordance with 42 U.S.C.
11 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the
12 interest accrues. The rate of interest is subject to change on October 1 of each
13 year.

14 “Leach Holding” shall mean Leach Holding Corporation, a Delaware
15 corporation that is the parent corporation of Leach International Corporation.

16 “Paragraph” shall mean a portion of this Consent Decree identified by an
17 Arabic numeral or an upper case letter.

18 “Parties” shall mean the United States, DTSC, and Settling Defendant.

19 “Plaintiffs” shall mean the United States and DTSC.

20 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
21 § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

22 “ROD” shall mean the EPA Record of Decision and all attachments thereto
23 relating to the interim remedy for the BPOU Area, which was signed by the
24 delegate of the Regional Administrator, EPA Region 9, on March 31, 1994. The
25 ROD is attached as Appendix B.

26 “Remedial Action” shall mean those activities, except for Operation and
27 Maintenance, undertaken to implement the ROD, as supplemented by the ESD.

28 “Response Costs” shall mean: (i) all past costs, including, but not limited to,

1 direct and indirect costs, that the United States has incurred at or in connection
2 with the BPOU Area prior to the entry of this Consent Decree, and (ii) all future
3 costs (including, but not limited to, direct and indirect costs) related to the
4 implementation or oversight of the Work, that the United States will incur at or in
5 connection with the BPOU Area.

6 “Section” shall mean a portion of this Consent Decree identified by a Roman
7 numeral.

8 “Settling Defendant” shall mean Leach International Corporation.

9 “Site” shall mean the San Gabriel Valley Superfund Sites, Areas 1-4, in Los
10 Angeles County, California.

11 “United States” shall mean the United States of America, including its
12 departments, agencies, and instrumentalities.

13 “Work” shall mean all activities required to be performed to implement the
14 ROD, as supplemented by the ESD, or to oversee the implementation of the ROD,
15 as supplemented by the ESD, at or in connection with the BPOU Area.

16 V. STATEMENT OF PURPOSE

17 4. By entering into this Consent Decree, the mutual objectives of the
18 Parties, as more precisely described in the terms of this Consent Decree, are:

19 a. To reach a settlement among the Parties with respect to the BPOU Area
20 that allows Settling Defendant to make a cash payment to resolve any claims for
21 civil or administrative liability under Sections 106 and 107 of CERCLA, 42 U.S.C.
22 §§ 9607, 9607, and RCRA Section 7003, 42 U.S.C. § 6973, for interim response
23 actions and for response costs related to interim response actions incurred and to be
24 incurred at or in connection with the BPOU Area, as provided in Section VIII
25 (Covenants Not to Sue by Plaintiffs) and Section IX (Plaintiffs’ Reservation of
26 Rights) of this Decree;

27 b. To resolve any claims of Settling Defendant and Leach Holding that
28 could have been asserted against the United States and DTSC with regard to the

1 BPOU Area as provided in Section X (Covenants Not to Sue by Settling Defendant
2 and Leach Holding) of this Decree;

3 c. To simplify the remaining administrative and judicial enforcement
4 activities concerning the BPOU Area by resolving the United States' and DTSC's
5 claims against Settling Defendant and Leach Holding for interim response actions
6 and for response costs related to interim response actions incurred and to be
7 incurred at or in connection with the BPOU Area, as provided in Section VIII
8 (Covenants Not to Sue by Plaintiffs) and Section IX (Plaintiffs' Reservation of
9 Rights) of this Decree; and

10 d. To provide for contribution protection for Settling Defendant and Leach
11 Holding with respect to matters addressed in this Consent Decree pursuant to
12 Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

13 **VI. PAYMENTS BY SETTLING DEFENDANT**

14 5. Within 30 days of the effective date of this Consent Decree, Settling
15 Defendant shall pay to EPA \$975,000 in the manner described in this Section.

16 6. Payment shall be made by FedWire Electronic Funds Transfer
17 ("EFT") to the U.S. Department of Justice account in accordance with current EFT
18 procedures, referencing the EPA Region and Site Spill Number 0927, and DOJ
19 Case Number 90-11-2-354/14. Payment shall be made in accordance with
20 instructions provided to Settling Defendant by the Financial Litigation Unit of the
21 U.S. Attorney's Office in the Central District of California following lodging of
22 the Consent Decree.

23 7. At the time of payment, Settling Defendant shall send a letter
24 confirming the date and reference number of its FedWire EFT to the United States,
25 EPA, and the Regional Financial Management Officer as provided in Section XVI
26 (Notices and Submissions) of this Decree.

27 8. The total amount to be paid pursuant to Paragraph 5 of this Consent
28 Decree shall be deposited in the Site 0927 San Gabriel Valley/Baldwin Park

1 Special Account within the EPA Hazardous Substance Superfund to be retained
2 and used to conduct or finance response actions at or in connection with the BPOU
3 Area, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

4 9. Within 30 days of the effective date of this Consent Decree, Settling
5 Defendant shall pay to DTSC \$44,940 in the form of a certified check or checks
6 made payable to Cashier, California Department of Toxic Substances Control, and
7 bearing on its face the docket number of this proceeding.

8 10. Settling Defendant shall send its certified check or checks, along with
9 a transmittal letter referencing the Baldwin Park Operable Unit, San Gabriel Valley
10 Superfund Sites, Project Nos. 300133, 300345, 300349, and 300350, to:

11 Department of Toxic Substances Control
12 Accounting/Cashier
13 1001 I Street, 4th Floor
P.O. Box 806
Sacramento, CA 95812-0806

14 11. Settling Defendant's payment to EPA and DTSC includes an amount
15 for: (i) the Work; (ii) Response Costs and DTSC Response Costs incurred or to be
16 incurred at or in connection with the BPOU Area; and (iii) a premium to cover the
17 risks and uncertainties associated with this settlement, including, but not limited to,
18 the risk that the total cost of the Work, Response Costs, and DTSC Response Costs
19 incurred or to be incurred at or in connection with the BPOU Area will exceed the
20 estimated total cost of the Work, Response Costs, and DTSC Response Costs upon
21 which Settling Defendant's payments are based.

22 VII. FAILURE TO COMPLY WITH CONSENT DECREE REQUIREMENTS

23 12. Interest on Late Payments. If Settling Defendant fails to make any
24 payment under Paragraphs 5 or 9 within 30 days of the effective date of this
25 Consent Decree, then Settling Defendant shall pay Interest on the unpaid balance,
26 commencing on the date that payment is due and accruing through the date of
27 payment. Settling Defendant shall make all payments required by this Paragraph
28 in the manner described in Paragraphs 6, 7, and 10 unless otherwise directed in

1 writing by EPA or DTSC.

2 13. Stipulated Penalty.

3 a. In addition to the Interest required by Paragraph 12 (Interest on Late
4 Payments), if Settling Defendant fails to remit the payments to the United States
5 required by Paragraph 5 when due, then Settling Defendant also shall pay
6 stipulated penalties to the United States of \$2,500 per day for each day that its
7 payment is late.

8 b. Stipulated penalties are due and payable to the United States within 30
9 days of the date of the demand for payment of the penalties by the United States.
10 All payments to the United States under this Paragraph shall be identified as
11 “stipulated penalties” and shall be made by certified or cashier’s check made
12 payable to “EPA Hazardous Substance Superfund.” The check, or a letter
13 accompanying the check, shall reference the name and address of the party making
14 payment, the Site name, EPA Region and Site Spill Number 0927, and DOJ Case
15 Number 90-11-2-354/14, and shall be sent to: EPA - Cincinnati Accounting
16 Operations, Attn: Region 9 Receivables, P.O. Box 371099M, Pittsburgh, PA
17 15251.

18 c. In addition to the Interest required by Paragraph 12 (Interest on Late
19 Payments), if Settling Defendant fails to remit the payment to DTSC required by
20 Paragraph 9 when due, then Settling Defendant also shall pay stipulated penalties
21 to DTSC of \$500 per day for each day that the payment is late.

22 d. Stipulated penalties are due and payable to DTSC within 30 days of the
23 date of the demand for payment of the penalties by DTSC. All payments to DTSC
24 under this Paragraph shall be identified as “stipulated penalties” and shall be made
25 by certified or cashier’s check made payable to “Cashier, California Department of
26 Toxic Substances Control.” The check, or a letter accompanying the check, shall
27 reference the name and address of the party making payment and the Site name,
28 and shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 4th Floor
P.O. Box 806
Sacramento, CA 95812-0806

e. At the time of payment of any stipulated penalties to the United States, Settling Defendant shall send copies of check(s), and any accompanying transmittal letter(s), to the United States, EPA, and the Regional Financial Management Officer as provided in Section XVI (Notices and Submissions) of this Consent Decree. At the time of payment of any stipulated penalties to DTSC, Settling Defendant shall send copies of check(s), and any accompanying transmittal letter(s) to DTSC as provided in Section XVI (Notices and Submissions).

f. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or DTSC has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

14. If the United States or DTSC brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the Plaintiff(s) bringing the action for all costs of such action, including, but not limited to, costs of attorney time.

15. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

16. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued to the United States pursuant to this Consent Decree. Notwithstanding any other provision of this Section, DTSC may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties

1 that have accrued to DTSC pursuant to this Consent Decree. Payment of stipulated
2 penalties shall not excuse Settling Defendant from its payment obligation as
3 required by Section VI or from performance of any other requirements of this
4 Consent Decree.

5 **VIII. COVENANTS NOT TO SUE BY PLAINTIFFS**

6 17. In consideration of the payment that will be made by Settling
7 Defendant under the terms of this Consent Decree, and except as otherwise
8 specifically provided in Section IX (Plaintiffs' Reservation of Rights), the United
9 States covenants not to sue or to take administrative action against Settling
10 Defendant and Leach Holding pursuant to Sections 106 and 107 of CERCLA, 42
11 U.S.C. §§ 9606, 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, for
12 performance of the Work and for recovery of Response Costs. In consideration of
13 the payment that will be made by Settling Defendant under the terms of this
14 Consent Decree, and except as otherwise specifically provided in Section IX
15 (Plaintiffs' Reservation of Rights), DTSC covenants not to sue or to take
16 administrative action against Settling Defendant and Leach Holding pursuant to
17 Section 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and Section 7003 of
18 RCRA, 42 U.S.C. § 6973, for performance of the Work and for recovery of DTSC
19 Response Costs. These covenants not to sue shall take effect upon the receipt by
20 EPA and DTSC of all payments required by Section VI (Payments by Settling
21 Defendant) and any amount due under Section VII (Failure to Comply with
22 Consent Decree Requirements). These covenants not to sue accorded to Settling
23 Defendant and Leach Holding are conditioned upon satisfactory performance by
24 Settling Defendant and Leach Holding of their obligations under this Consent
25 Decree. These covenants not to sue extend only to Settling Defendant and Leach
26 Holding and do not extend to any other person.

27 **IX. PLAINTIFFS' RESERVATION OF RIGHTS**

28 18. Pre-certification Reservations. The United States reserves, and this

Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant and/or Leach Holding: (1) to perform response actions relating to the BPOU Area or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

(i) conditions at the BPOU Area, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment. If EPA makes such a determination, DTSC reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant and/or Leach Holding to reimburse DTSC for additional costs of response.

19. Post-certification Reservations. The United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant and/or Leach Holding: (1) to perform response actions relating to the BPOU Area or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(i) conditions at the BPOU Area, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not

1 protective of human health or the environment. If EPA makes such a
2 determination, DTSC reserves, and this Consent Decree is without prejudice to, the
3 right to institute proceedings in this action or in a new action, or to issue an
4 administrative order seeking to compel Settling Defendant and/or Leach Holding to
5 reimburse DTSC for additional costs of response.

6 20. For purposes of Paragraph 18, the information and the conditions
7 known to EPA shall include only that information and those conditions known to
8 EPA as of May 31, 1999, the date of the ESD supplementing the ROD, and set
9 forth in the ROD, the ESD, and the administrative record supporting the ROD and
10 the ESD. For purposes of Paragraph 19, the information and the conditions known
11 to EPA shall include only that information and those conditions known to EPA as
12 of the date of Certification of Completion of the Remedial Action, and set forth in
13 the ROD, the ESD, the administrative record supporting the ROD and the ESD,
14 and the post-ROD administrative record.

15 21. General Reservation of Rights. The covenants not to sue set forth in
16 Paragraph 17 do not pertain to any matters other than those expressly specified
17 therein. The United States and DTSC reserve, and this Consent Decree is without
18 prejudice to, all rights of the United States and DTSC against Settling Defendant
19 and Leach Holding with respect to all other matters including, but not limited to,
20 the following:

21 (1) claims based on a failure by Settling Defendant and/or Leach Holding to
22 meet a requirement of this Consent Decree;

23 (2) liability arising from the past, present, or future disposal, release, or
24 threat of release of hazardous substances, pollutants, contaminants, or solid wastes
25 outside of the BPOU Area;

26 (3) liability based upon Settling Defendant's and/or Leach Holding's
27 transportation, treatment, storage, or disposal, or the arrangement for the
28 transportation, treatment, storage, or disposal of hazardous substances, pollutants,

contaminants, or solid wastes at or in connection with the BPOU Area after signature of this Consent Decree by the Settling Defendant and Leach Holding;

(4) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(5) criminal liability;

(6) liability for response costs and response actions at additional operable units at the Site, or a final response action, including, but not limited to, the final Record of Decision for the BPOU Area;

(7) liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions that are not within the BPOU Area; and

(8) liability for costs incurred or to be incurred that are not within the definition of Response Costs or DTSC Response Costs.

22. Notwithstanding any other provision of this Consent Decree, the United States and DTSC reserve, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or commence a new action seeking relief other than as provided in this Consent Decree, if the certification made by Leach Holding in Paragraph 42 is false or, in any material respect, inaccurate.

23. Notwithstanding any other provision of this Consent Decree, the United States and DTSC retain all authority and reserve all rights to take any and all response actions authorized by law.

X. COVENANTS NOT TO SUE BY SETTLING DEFENDANT AND LEACH HOLDING

24. Subject to the reservation in Paragraph 24(f), Settling Defendant and Leach Holding hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or DTSC, or their contractors or employees, with respect to the BPOU Area or this Consent Decree, including, but not limited to:

1 a. any direct or indirect claim for reimbursement from the Hazardous
2 Substance Superfund (established pursuant to the Internal Revenue Code, 26
3 U.S.C. § 9507) based on CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42
4 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

5 b. any claims arising out of response actions at or in connection with the
6 BPOU Area, including any claims under the United States Constitution, the
7 California Constitution, the Tucker Act, 42 U.S.C. § 1491, the Equal Access to
8 Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

9 c. any claims against the United States, including any department, agency,
10 or instrumentality of the United States, under CERCLA Sections 107 or 113
11 related to the BPOU Area;

12 d. any claims against the State of California, including any department,
13 agency, or instrumentality of the State of California, under CERCLA Sections 107
14 or 113 related to the BPOU Area; or

15 e. any claims against the United States or DTSC arising out of response
16 activities at the BPOU Area, including claims based on EPA's and DTSC's
17 selection of response actions, oversight of response activities or approval of plans
18 for such activities.

19 f. Settling Defendant and Leach Holding reserve, and this Consent Decree is
20 without prejudice to, claims against the United States under federal law for costs
21 incurred at the BPOU Area based upon any contract with the United States
22 regarding activities at Settling Defendant's facility at 717 North Coney Avenue in
23 Azusa, California (the "Facility").

24 25. Except as provided in Paragraph 27 (Waiver of Claims) and Paragraph
25 33 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply
26 to Settling Defendant and Leach Holding in the event the United States or DTSC
27 brings a cause of action or issues an order against Settling Defendant and Leach
28 Holding pursuant to the reservations set forth in Paragraph 21, but only to the

1 extent that Settling Defendant's or Leach Holding's claims arise from the same
2 response action or response costs that the United States or DTSC is seeking against
3 the Settling Defendant and Leach Holding pursuant to the applicable reservation.

4 26. Nothing in this Consent Decree shall be deemed to constitute approval
5 or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42
6 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

7 27. Settling Defendant and Leach Holding hereby agree not to assert any
8 CERCLA claims or causes of action that they may have for all matters relating to
9 the BPOU Area, including for contribution, against any person other than Settling
10 Defendant's and Leach Holding's respective insurance carriers and potentially
11 responsible parties who have received in the past or receive in the future special
12 notice from EPA in connection with the BPOU Area and who are not signatories to
13 this Consent Decree or another Consent Decree in connection with the BPOU
14 Area, for damages or costs of any kind relating to response actions and costs
15 incurred at the BPOU Area, including without limitation, claims under Sections
16 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, common law claims of
17 negligence, contribution, equitable indemnity and restitution, and claims under any
18 other federal, state or local statutory or common law. This waiver shall not apply
19 with respect to any defense, claim, or cause of action that Settling Defendant or
20 Leach Holding may have against any person if such person asserts a claim or cause
21 of action relating to the BPOU Area against Settling Defendant or Leach Holding.

22 **XI. SETTLING DEFENDANT'S AND LEACH HOLDING'S**
23 **RESERVATION OF RIGHTS**

24 28. With the exception of the defenses or claims covered by Paragraph 33
25 below (Waiver of Claim-Splitting Defenses), Settling Defendant and Leach
26 Holding reserve their rights to raise any and all defenses to liability in any future
27 proceeding brought by the United States or DTSC pursuant to the reservations set
28 forth in Paragraph 21 to the extent that Settling Defendant's and Leach Holding's

1 claims arise from the same response action or response costs that the United States
2 or DTSC is seeking against the Settling Defendant or Leach Holding pursuant to
3 the applicable reservation. Nothing in this Consent Decree shall be construed as an
4 admission of liability.

5 XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

6 29. Except as expressly provided in Paragraph 27, nothing in this Consent
7 Decree shall be construed to create any rights in, or grant any cause of action to,
8 any person not a Party to this Consent Decree. The preceding sentence shall not be
9 construed to waive or nullify any rights that any person not a signatory to this
10 Decree may have under applicable law. Except as provided in Paragraph 27, each
11 of the Parties expressly reserves any and all rights (including, but not limited to,
12 any right to contribution), defenses, claims, demands, and causes of action which
13 each Party may have with respect to any matter, transaction, or occurrence relating
14 in any way to the Site against any person not a Party hereto.

15 30. The Parties agree, and by entering this Consent Decree this Court
16 finds, that Settling Defendant and Leach Holding are entitled, as of the effective
17 date of this Consent Decree, to protection from contribution actions or claims as
18 provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for “matters
19 addressed” in this Consent Decree. For purposes of this Paragraph, “matters
20 addressed” shall mean (a) the Work, (b) all response costs incurred prior to the
21 entry of this Consent Decree by the United States, DTSC, or any other person at or
22 in connection with the BPOU Area, and (c) all response costs related to the
23 implementation or oversight of the Work to be incurred after the entry of this
24 Consent Decree by the United States, DTSC, or any other person at or in
25 connection with the BPOU Area. The “matters addressed” in this Consent Decree
26 do not include those response costs or response actions as to which the United
27 States or DTSC has reserved its rights under this Consent Decree (except for
28 claims for failure to comply with this Decree), in the event that the United States or

1 DTSC asserts rights against Settling Defendant and/or Leach Holding coming
2 within the scope of such reservations.

3 31. Settling Defendant and Leach Holding agree that with respect to any
4 suit or claim for contribution brought by them for matters related to this Consent
5 Decree, they will notify the United States and DTSC in writing no later than 60
6 days prior to the initiation of such suit or claim.

7 32. Settling Defendant and Leach Holding also agree that with respect to
8 any suit or claim for contribution brought against them for matters related to this
9 Consent Decree, they will notify in writing the United States and DTSC within 10
10 days of service of the complaint on them. In addition, with respect to any such suit
11 or claim, Settling Defendant and Leach Holding shall notify the United States and
12 DTSC within 10 days of service on them or receipt by them of any Motion for
13 Summary Judgment and within 10 days of receipt by them of any order from a
14 court setting a case for trial.

15 33. In any subsequent administrative or judicial proceeding initiated by
16 the United States or DTSC for injunctive relief, recovery of response costs, or
17 other relief relating to the Site, Settling Defendant and Leach Holding shall not
18 assert, and may not maintain, any defense or claim based upon the principles of
19 waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other
20 defenses based upon any contention that the claims raised by the United States or
21 DTSC in the subsequent proceeding were or should have been brought in the
22 instant case; provided, however, that nothing in this Paragraph affects the
23 enforceability of the covenants not to sue set forth in Section VIII (Covenants Not
24 to Sue by Plaintiffs).

25 XIII. ACCESS

26 34. If Settling Defendant owns or controls any property where access is
27 needed to implement response activities at the Site, then, commencing on the date
28 of lodging of the Consent Decree, Settling Defendant shall provide the United

1 States, the State, and their representatives, including EPA and its contractors, with
2 access at all reasonable times to such property, for the purpose of conducting any
3 response activity related to the Site, including, but not limited to, the following
4 activities:

- 5 a. Monitoring, investigation, removal, remedial or other activities at the
6 Site;
- 7 b. Verifying any data or information submitted to the United States or the
8 State;
- 9 c. Conducting investigations relating to contamination at or near the Site;
- 10 d. Obtaining samples;
- 11 e. Assessing the need for, planning, or implementing additional response
12 actions at or near the Site;
- 13 f. Inspecting and copying records, operating logs, contracts, or other
14 documents maintained or generated by Settling Defendant or its agents, consistent
15 with Section XIV (Access to Information); and
- 16 g. Assessing Settling Defendant's compliance with this Consent Decree.

17 35. Notwithstanding any provision of this Consent Decree, the United
18 States and the State of California retain all of their access authorities and rights,
19 including enforcement authorities related thereto, under CERCLA, RCRA, and any
20 other applicable statute or regulations.

21 XIV. ACCESS TO INFORMATION

22 36. Settling Defendant shall provide to EPA and DTSC, upon request,
23 copies of all documents and information within its possession or control or that of
24 its contractors or agents relating to activities at the Site or to the implementation of
25 this Consent Decree, including, but not limited to, sampling, analysis, chain of
26 custody records, manifests, trucking logs, receipts, reports, sample traffic routing,
27 correspondence, or other documents or information related to the Site.

28 37. Confidential Business Information and Privileged Documents.

1 a. Settling Defendant may assert business confidentiality claims covering
2 part or all of the documents or information submitted to Plaintiffs under this
3 Consent Decree to the extent permitted by and in accordance with Section
4 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
5 Documents or information determined to be confidential by EPA will be accorded
6 the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
7 confidentiality accompanies documents or information when they are submitted to
8 EPA and DTSC, or if EPA has notified Settling Defendant that the documents or
9 information are not confidential under the standards of Section 104(e)(7) of
10 CERCLA, or 40 C.F.R. Part 2, Subpart B, the public may be given access to such
11 documents or information without further notice to Settling Defendant.

12 b. Settling Defendant may assert that certain documents, records and other
13 information are privileged under the attorney-client privilege or any other privilege
14 recognized by federal law. If Settling Defendant asserts such a privilege in lieu of
15 providing documents, it shall provide the Plaintiffs with the following: (1) the title
16 of the document, record, or information; (2) the date of the document, record, or
17 information; (3) the name, title, affiliation (e.g., company or firm), and address of
18 the author of the document, record, or information; (4) the name and title of each
19 addressee and recipient; (5) a description of the subject of the document, record, or
20 information; and (6) the privilege asserted by Settling Defendant. However, no
21 document, report or other information created or generated pursuant to the
22 requirements of the Consent Decree shall be withheld on the grounds that it is
23 privileged.

24 38. No claim of confidentiality shall be made with respect to any data,
25 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,
26 scientific, chemical, or engineering data, or any other documents or information
27 evidencing conditions at or around the Site.

28 **XV. RETENTION OF RECORDS; CERTIFICATION**

1 39. Until 10 years after the Settling Defendant's receipt of EPA's
2 notification, transmitted pursuant to Paragraph 43, of the issuance of EPA's
3 Certification of Completion of the Work, Settling Defendant shall preserve and
4 retain all records and documents now in its possession or control, or which come
5 into its possession or control, that relate in any manner to response actions taken at
6 the Site or liability of any person for response actions conducted and to be
7 conducted at the Site, regardless of any corporate retention policy to the contrary.

8 40. At the conclusion of this document retention period, Settling
9 Defendant shall notify the United States and DTSC at least 90 days prior to the
10 destruction of any such records or documents, and, upon request by the United
11 States or DTSC, Settling Defendant shall deliver any such records or documents to
12 EPA or DTSC. Settling Defendant may assert that certain documents, records and
13 other information are privileged under the attorney-client privilege or any other
14 privilege recognized by federal law. If Settling Defendant asserts such a privilege,
15 it shall provide the Plaintiffs with the following: (1) the title of the document,
16 record, or information; (2) the date of the document, record, or information; (3) the
17 name, title, affiliation (e.g., company or firm), and address of the author of the
18 document, record, or information; (4) the name and title of each addressee and
19 recipient; (5) a description of the subject of the document, record, or information;
20 and (6) the privilege asserted by Settling Defendant. However, no document,
21 report or other information created or generated pursuant to the requirements of the
22 Consent Decree shall be withheld on the grounds that it is privileged.

23 41. Settling Defendant hereby certifies that, to the best of its knowledge
24 and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed
25 or otherwise disposed of any records, documents or other information relating to its
26 potential liability regarding the Site since notification of potential liability by the
27 United States or DTSC or the filing of suit against it regarding the BPOU Area,
28 and that it has fully complied with any and all EPA requests for information

1 pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e),
2 and Section 3007 of RCRA, 42 U.S.C. § 6927.

3 42. Leach Holding hereby certifies, to the best of its knowledge and
4 belief, after thorough inquiry, that, other than its ownership of 100 percent of the
5 stock of Leach International Corporation at the time of Settling Defendant's
6 operation of the Facility, Leach Holding did not own or operate the Facility and did
7 not arrange for the disposal or treatment, or arrange with a transporter for transport
8 for disposal or treatment, of hazardous substances, pollutants or contaminants from
9 the Facility. If the United States determines that the certification provided by
10 Leach Holding is not materially accurate and complete, the covenants not to sue
11 and contribution protection afforded Leach Holding by Sections VIII (Covenants
12 not to Sue by Plaintiffs) and XII (Effect of Settlement; Contribution Protection),
13 within the sole discretion of the United States, shall be null and void and the
14 United States and DTSC reserve all rights they may have.

15 XVI. NOTICES AND SUBMISSIONS

16 43. Whenever, under the terms of this Consent Decree, written notice is
17 required to be given or a report or other document is required to be sent by one
18 Party to another, it shall be directed to the individuals at the addresses specified
19 below, unless those individuals or their successors give notice of a change to the
20 other Parties in writing. All notices and submissions shall be considered effective
21 upon receipt, unless otherwise provided. Written notice as specified herein shall
22 constitute complete satisfaction of any written notice requirement of the Consent
23 Decree with respect to the United States, EPA, DTSC, the Settling Defendant, and
24 Leach Holding, respectively.

1 As to the United States:

2 Chief, Environmental Enforcement Section
3 Environment and Natural Resources Division
4 U.S. Department of Justice
5 P.O. Box 7611, Ben Franklin Station
6 Washington, D.C. 20044
7 Re: DJ # 90-11-2-354/14

8 and

9 Robert D. Mullaney
10 Trial Attorney
11 Environmental Enforcement Section
12 U.S. Department of Justice
13 301 Howard Street, Suite 1050
14 San Francisco, CA 94105

15 As to EPA:

16 Janet Magnuson, ORC-3
17 Assistant Regional Counsel
18 United States Environmental Protection Agency
19 75 Hawthorne Street
20 San Francisco, CA 94105

21 and

22 Wayne Praskins, SFD-7-3
23 EPA Project Coordinator
24 United States Environmental Protection Agency
25 75 Hawthorne Street
26 San Francisco, CA 94105

27 As to the Regional Financial Management Officer:

28 Joe Schmidt, PMD-5
United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

29 As to DTSC:

30 Jacalyn Spizman
31 DTSC Project Coordinator
32 Department of Toxic Substances Control
33 5796 Corporate Avenue
34 Cypress, CA 90630

35 and

36 Ann Rushton
37 Office of the Attorney General
38 300 South Spring Street
Los Angeles, CA 90013

1 As to Settling Defendant and Leach Holding:

2 Robert Sires
3 President
4 Leach Holding Corporation
5 Suite 114
6 2 Corporate Drive
7 Trumbull, CT 06611

8 XVII. EFFECTIVE DATE

9 44. The effective date of this Consent Decree shall be the date upon which
10 this Consent Decree is entered by the Court, except as otherwise provided herein.

11 XVIII. RETENTION OF JURISDICTION

12 45. This Court retains jurisdiction over this matter for the purpose of
13 interpreting and enforcing the terms of this Consent Decree.

14 XIX. INTEGRATION/APPENDICES

15 46. This Consent Decree and its appendices constitute the final, complete
16 and exclusive agreement and understanding among the Parties with respect to the
17 settlement embodied in this Consent Decree. The Parties acknowledge that there
18 are no representations, agreements, or understandings relating to the settlement
19 other than those expressly contained in this Consent Decree. The following
20 appendices are attached to and incorporated into this Consent Decree:

21 “Appendix A” is the map of the BPOU Area;

22 “Appendix B” is a copy of the ROD; and

23 “Appendix C” is a copy of the ESD.

24 XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

25 47. This Consent Decree shall be lodged with the Court for a period of
26 not less than thirty (30) days for public notice and comment. The United States
27 reserves the right to withdraw or withhold its consent if the comments regarding
28 the Consent Decree disclose facts or considerations which indicate that the Consent
Decree is inappropriate, improper, or inadequate. Settling Defendant and Leach
Holding consent to the entry of this Consent Decree without further notice.

1 48. If for any reason the Court should decline to approve this Consent
2 Decree in the form presented, this agreement is voidable at the sole discretion of
3 any Party and the terms of the agreement may not be used as evidence in any
4 litigation between the Parties.

5 XXI. SIGNATORIES/SERVICE

6 49. The undersigned representative of Settling Defendant and Leach
7 Holding to this Consent Decree, the Assistant Attorney General for the
8 Environment and Natural Resources Division of the United States Department of
9 Justice, or his delegate, and the Deputy Attorney General of the California
10 Department of Justice certifies that he or she is fully authorized to enter into the
11 terms and conditions of this Consent Decree and to execute and legally bind such
12 Party to this document.

13 50. Settling Defendant and Leach Holding hereby agree not to oppose
14 entry of this Consent Decree by this Court or to challenge any provision of this
15 Consent Decree unless the United States has notified Settling Defendant and Leach
16 Holding in writing that it no longer supports entry of the Consent Decree.

17 51. Settling Defendant shall identify, on the attached signature page, the
18 name, address and telephone number of an agent who is authorized to accept
19 service of process by mail on behalf of Settling Defendant and Leach Holding with
20 respect to all matters arising under or relating to this Consent Decree. Settling
21 Defendant hereby agrees to accept service in that manner and to waive the formal
22 service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and
23 any applicable local rules of this Court, including, but not limited to, service of a
24 summons.

25 XXII. FINAL JUDGMENT

26 52. Upon approval and entry of this Consent Decree by the Court, this
27 Consent Decree shall constitute a final judgment between and among the United
28 States, DTSC, the Settling Defendant, and Leach Holding. The Court finds that

1 there is no just reason for delay and therefore enters this judgment as a final
2 judgment under Fed. R. Civ. P. 54 and 58.

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6 Dated: _____

7 United States District Judge
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States and California Department of Toxic Substances Control v.
3 Leach International Corporation, relating to the BPOU Area.

4
5 FOR THE UNITED STATES OF AMERICA

6
7
8 Dated: _____

9 Kelly A. Johnson
10 Acting Assistant Attorney General
11 Environment and Natural Resources
12 Division
13 U.S. Department of Justice
14 Washington, D.C. 20530

15 Dated: _____

16 Robert D. Mullaney
17 Trial Attorney
18 Environmental Enforcement Section
19 Environment and Natural Resources
20 Division
21 U.S. Department of Justice
22 301 Howard Street, Suite 1050
23 San Francisco, California 94105
24
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27
28

1
2 Dated: _____

3 Keith Takata
4 Director, Superfund Division
5 Region IX
6 U.S. Environmental Protection Agency
7 75 Hawthorne Street
8 San Francisco, CA 94105

9
10 Dated: _____

11 Janet Magnuson
12 Assistant Regional Counsel
13 U.S. Environmental Protection Agency
14 Region IX
15 San Francisco, CA 94105
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1 FOR THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES
2 CONTROL

3 Dated: _____

4 Thomas Cota, Chief
5 Southern California Cleanup Operations
6 Branch, Cypress Office
7 Department of Toxic Substances Control
8 5796 Corporate Avenue
9 Cypress, California 90630

10 Dated: _____

11 Ann Rushton
12 Deputy Attorney General
13 California Department of Justice
14 300 South Spring Street
15 Los Angeles, California 90013

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States and State of California Department of Toxic Substances
Control v. Leach International Corporation, relating to the BPOU Area.

3
4 FOR LEACH INTERNATIONAL CORPORATION and LEACH HOLDING
CORPORATION

5
6
7 Dated: _____

8 Robert Sires
9 President
Leach Holding Corporation
Suite 114
10 2 Corporate Drive
11 Trumbull, CT 06611 NAME

12 Agent Authorized to Accept Service on Behalf of Above-signed Parties:

13 National Registered Agents, Inc.
14 9 East Loockerman Street, Suite 1B
15 Dover, Delaware 19901
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